

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)
	) File No.: EB-09-LA-0115
South Bay Aviation, Inc.	)
	) NAL/Acct. No.: 201132900002
Torrance, California	)
	) FRN: 0019547736

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** January 28, 2011

**Released:** January 31, 2011

By the District Director, Los Angeles District Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that South Bay Aviation, Inc. (“South Bay Aviation”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Communications Act” or “Act”)<sup>1</sup> and Section 1.903(a) of the Commission’s Rules (“Rules”)<sup>2</sup> by operating a radio transmitter without the requisite Commission authorization. We conclude that South Bay Aviation is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

**II. BACKGROUND**

2. On February 2, 2010, in response to a complaint that a person or entity was operating a station on frequency 122.950 MHz at the Torrance Airport in Torrance, California, without a license, an agent from the Enforcement Bureau’s Los Angeles Office (“Los Angeles Office”) monitored transmissions on 122.950 MHz at the Torrance Airport. The Los Angeles agent approached South Bay Aviation’s offices, located at the Torrance Airport, and observed a Unicom base station set to operate on frequency 122.950 MHz. The agent conducted an inspection of the base station and confirmed that South Bay Aviation was operating on 122.950 MHz. South Bay Aviation’s President and Chief Executive Officer (“President/CEO”), who was present at the time of the inspection, was unable to provide a license or any other documentation authorizing South Bay Aviation’s operation on 122.950 MHz.

3. The next day, the Los Angeles agent received a voice mail message from South Bay Aviation’s President/CEO stating that South Bay Aviation had a license, with call sign KTV5, but that the license had expired. A review of the Commission’s records revealed that the KTV5 license had expired on August 3, 2000 and was canceled by the Commission on May 6, 2001. Moreover, the expired KTV5 license had authorized operation on 122.950 MHz at a fixed location at the Long Beach Airport, in Long Beach, California, not at South Bay Aviation’s current location at the Torrance Airport in Torrance, California.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 1.903(a).

4. On March 23, 2010, the Los Angeles Office issued a Letter of Inquiry to South Bay Aviation.<sup>3</sup> On April 5, 2010, the Los Angeles Office received South Bay Aviation's response to the *LOI*.<sup>4</sup> In the *LOI Response*, South Bay Aviation acknowledged that it did not have a license to operate on 122.950 MHz at the Torrance Airport location and that it was unaware that its expired license had to be renewed or had a "cancellation date." South Bay Aviation also indicated that it had operated on the frequency 122.950 MHz subsequent to its relocation to a new permanent facility at its current address of record at the Torrance Airport in California in 2003. South Bay Aviation further stated that upon becoming aware of the license expiration after communications with the Los Angeles Office, it ceased operation on 122.950 MHz and filed a new application to operate on the frequency at the Torrance Airport location. A new license, call sign WQLY696, for operation on 122.950 MHz at the Torrance Airport location, was granted to South Bay on May 28, 2010.<sup>5</sup>

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>6</sup> The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>7</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

6. Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."<sup>9</sup> Section 1.903(a) of the Rules states that "[s]tations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission . . . ."<sup>10</sup> On February 2, 2010, a Los Angeles agent observed a base station in operation on 122.950 MHz at South Bay Aviation, located at the Torrance Airport in Torrance, California. At the time of the inspection, South Bay Aviation's President/CEO did not have a license or any other documentation authorizing South Bay Aviation's operation on 122.950 MHz. Subsequently, South Bay Aviation acknowledged that it did not have a license to operate on 122.950 MHz as its license for

<sup>3</sup> See *Letter of Inquiry* from Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, to South Bay Aviation, Inc., dated March 23, 2010 ("*LOI*").

<sup>4</sup> See Letter from to South Bay Aviation, Inc., to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated April 5, 2010 ("*LOI Response*").

<sup>5</sup> See File Number 0004197709, granted May 28, 2010.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>9</sup> 47 U.S.C. § 301.

<sup>10</sup> 47 C.F.R. § 1.903(a).

operation on this frequency at a different location had expired on August 3, 2000. The violation was repeated because it occurred on more than one day.<sup>11</sup> The violation was willful because subsequent to the expiration of its license, South Bay Aviation consciously and deliberately operated on frequency 122.950 MHz at the Torrance Airport, an action that violates the licensing requirements of Section 301 of the Act and Section 1.903(a) of the Rules.<sup>12</sup> Based on the evidence before us, we find that South Bay Aviation apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules.

7. Pursuant to the *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.<sup>13</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>14</sup> South Bay Aviation has apparently been operating on the frequency 122.950 MHz at the Torrance Airport since 2003, despite the expiration of its former license, in 2000, for operation at the Long Beach Airport. While earlier precedent might suggest a lower forfeiture amount,<sup>15</sup> we note that the unlicensed operation was ongoing for several years. In addition, we are mindful of the fact that the reduced forfeiture amounts applied in past cases do not appear to be creating sufficient incentives for licensees to monitor their license expiration dates.<sup>16</sup> Under the totality of the evidence, therefore, we find that no downward adjustment from the base forfeiture amount of \$10,000 is warranted. Given the duration of the violation, we do find that an upward adjustment is appropriate. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that South Bay Aviation is apparently liable for a forfeiture in the amount of \$12,000.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, South Bay Aviation, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for apparently willfully and repeatedly violating Section 301 of the Act and Section 1.903(a) of the Rules.<sup>17</sup>

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, South Bay Aviation,

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<sup>11</sup> See *supra* n.8.

<sup>12</sup> See *supra* n.7.

<sup>13</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004). See also *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (forfeiture paid); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

<sup>16</sup> See also *BASF Corporation*, Notice of Apparent Liability for Forfeiture, DA 10-2347 ¶ 10 (Enf. Bur., Rel. Dec. 17, 2010).

<sup>17</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 1.903(a), 0.311, 0.314, 1.80.

Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. South Bay Aviation shall send electronic notification to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Road, Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent both by regular mail and by Certified Mail, Return Receipt Requested, and regular mail, to South Bay Aviation, Inc., 3481 Airport Drive, Suite 100, Torrance, CA, 90505.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghighat  
District Director  
Los Angeles District Office  
Western Region  
Enforcement Bureau

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<sup>18</sup> See 47 C.F.R. § 1.1914.